



WISCONSIN DEPARTMENT OF CORRECTIONS

Governor Tony Evers / Secretary Kevin A. Carr

GUIDANCE DOCUMENT CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections §227.10 and §227.11 of the Wisconsin Statutes.

I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated.

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Name of Individual Certifying this Document/Proposed Document

ADMINISTRATOR, DIVISION OF COMMUNITY CORRECTIONS

Title


[Handwritten Signature]

Signature

6/25/19

Date Signed

Department of Corrections – Wisconsin
Office of the Secretary
Wis. Stat. § 227.112(6)
DOC-2910 (6/2019)

 <p style="text-align: center;">WISCONSIN DEPARTMENT OF CORRECTIONS Division of Community Corrections DOC-1356 (Rev. 12/2009) Administrative Directive # 15-01</p>	EFFECTIVE DATE 01/12/2015	PAGE NUMBER 1
	MANUAL REFERENCE	<input checked="" type="checkbox"/> New <input type="checkbox"/> Revision
	Administrator's Office Denise Symdon <i>Denise Symdon</i>	
DISSEMINATION <input checked="" type="checkbox"/> All Staff <input type="checkbox"/> Supervisory Staff Only		PRIORITY <input checked="" type="checkbox"/> Policy/Directive <input type="checkbox"/> Information Discuss at Staff Meeting Read/Route/Post
SUBJECT: Attorney Access to DCC Supervision File During Revocation or Court Proceedings		

References:

- WI Administrative Code HA 2.05(1)(e) and HA 2.05(5)
- §§14.05.01 through 14.05.06, DCC Operations Manual, Chapter 14 – Office Management – Record Keeping
- §06.12.04, DCC Operations Manual, Chapter 6 – Supervision – Release of Confidential Information

Purpose: To establish DCC policy on how to receive, manage and respond to attorney requests for offender records during the revocation process OR pending court proceedings related to the offender's current supervision.

Policy Statement: The assigned agent of record or designee shall be responsible for maintaining the records and enabling attorneys representing offenders during the revocation process or pending court proceedings to make requests for DCC records, providing timely access to DCC records, obtaining and providing copies of DCC records, and collecting fees.

Procedure:

The following procedures are specific to requests made by an attorney to inspect or receive copies of DCC Supervision file.

Offender or Inmate Attorney – INSPECT OR RECEIVE COPY: When an attorney contacts an agent requesting to inspect a client's DCC supervision file, the following steps are taken:

- I. **PENDING REVOCATION PROCEEDING:** If there is a pending revocation proceeding where the attorney representing the offender or inmate is requesting access to the file, such access is governed by Wisconsin Administrative Code Section HA 2.05(1)(e). These are not public records requests. The attorney is entitled to inspect "whatever information or evidence is in possession of the department" unless "otherwise confidential".
 - A. The administrative code provisions provide for inspection. Agents should facilitate an attorney review of the file prior to providing a copy of the entire file. Many attorneys do not know what is in the file and once it is viewed the request for copies will likely be reduced. It has been the policy of the Department to provide copies without cost to Public Defender attorneys only, however, abuses of this practice should be brought to the attention of the Regional Records Custodian. The timing and circumstances of a given case may not permit an attorney review prior to getting copies. In these circumstances it may be helpful for the agent to discuss the contents of the supervision file with the attorney prior to making copies. Private attorneys that are not appointed by the Public Defender's Office should be billed for copies.

- B. The attorney should provide valid authorization from the client of the requested records (DOC-1163 and/or DOC1163A) or a valid court order signed by a judge, to view any confidential records (healthcare or non-health care records). Court orders must be specific as to protected health information, PSI disclosures and juvenile records. If a valid authorization is not received, all health care records and confidential or privileged records/information must be removed or redacted.
1. The agent shall request that the attorney provide the completed DOC 1163 and DOC 1163A for access to confidential information in the DOC/DCC Supervision File. Each form shall designate that the individual or agency being authorized to disclose records and/or PHI as "DOC/DCC – Supervision File Records Only."
 2. Records such as chronological data and COMPAS notes, including COMPAS notes entered by 3rd parties, maintained in a paperless format by the agent should be printed. As more and more records transition to a paperless format, it may be necessary to facilitate an attorney viewing of authorized records and/or a transfer of data to a medium for viewing, access and copies.
- C. The agent must scrutinize the DOC 1163 and DOC 1163A or court order to determine what records may be released. Information referenced on the DOC 1163 and DOC 1163A may not be released unless authorized on the release and remain "otherwise confidential." If proper authorization is obtained for the attorney to access the file, the following types of information still remain "otherwise confidential" and should not be disclosed absent a court order:
1. Pre-Sentence Investigation Reports
 2. 3rd Party Protected Health Information (e.g. victim medical information).
 - o NOTE: If 3rd Party protected health information is necessary to prove a rule violation, the agent should consult with a supervisor and legal counsel to determine if disclosure can or should occur.
 3. Social Security numbers of those other than the offender or inmate.
 4. Juvenile records (Note: Offenders and inmates can permit access to juvenile records involving themselves that may be retained in DCC files. Information as to other juveniles may need to be redacted unless the document is already in the public domain, such as a criminal complaint.
 5. Other information deemed confidential as a matter of law.
- D. All protected health information regarding the subject/offender of the release that is lawfully contained within the supervision file may be re-disclosed under this section if a properly executed DOC 1163A has been provided. Educational records are addressed in DOC 1163.
- E. Names and contact information of potential witnesses in the revocation proceeding, regardless of whether they will be called, should not be redacted even if they are juveniles, unless protective measures are required as authorized in HA 2.05(5).
- F. Copies of records that are normally handed to the offender in the course of DCC supervision (i.e. revocation packet), can be given to the offender's attorney of record upon request as these are not public records requests.
- G. Protective Measures: The identity of a witness may be withheld from the offender if disclosure of the identity would threaten the safety of the witness or another. See Wisconsin Administrative Code, HA 2.05(5). This will occur in extraordinary circumstances and the agent should consult with a supervisor and legal counsel if protective action is desired. [Note: Protective measures should be considered prior to revocation packets being filed because this information would normally be contained within the revocation packet.]

II. **OTHER LEGAL PROCEEDINGS:** There are other legal proceedings where attorneys may request access to records within the DCC supervision file and or supervising agent. Proceedings that are extensions of the revocation process such as a revocation appeal via Writ of Certiorari to the circuit court and beyond and Motions for Booker Hearings (new revocation hearing) shall be governed by the provisions of Section I.

A. Court Reviews: Proceedings involving court reviews are an extension of the underlying criminal case which suggest broad access be given to counsel for the defense. There is no established discovery process in these proceedings other than making sure that the offender's due process rights are not violated particularly if a liberty interest is involved as in situations where condition time may be requested. Agents may disclose the types of records contained in the supervision file, but they are not to make decisions as to what is relevant to the defense for any court proceeding. Because this is an extension of the criminal case, it may be necessary to take protective measures regarding victim information.

1. If an attorney requests access to the entire DOC/DCC supervision file in this type of proceeding, the agent should follow the provisions of Section 1: A, B, C, D and F and provision II.A.2 below.
2. Victim information: There are two different types of victim information that may exist in the supervision file.
 - a. Victim(s) in the underlying criminal case: Victim information relating to the underlying criminal case may require redaction or protection so that it is not disseminated to an offender where there is a no-contact provision in place either by order of the court or by rules of supervision.
 - b. Victim(s) relating to supervision rule violations: In many circumstances the victims in the underlying criminal case are also the victims in incidents involving supervision rule violations. If the rule violation involving a victim is the subject of a court proceeding, information will need to be disclosed to the defense, however, protective measures may be implemented which can still facilitate attorney access to information and the potential witness. The name of the victim would generally never be redacted.
 - c. Agents should consult their Regional Record Custodian with any questions.

B. Habeas Actions: Writ of Habeas Corpus actions are civil actions where the offender is claiming that he/she is being illegally restrained. Agents may have contact in the following habeas actions: calculations of sentence credit, challenges to holds beyond 50 days when revocation proceedings are pending, and allegations of ineffective assistance of revocation counsel.

- a. In cases where the offender is seeking immediate release prior to a revocation hearing because he or she has been held beyond 50 days, the attorney would have already been given full access to the DCC file pursuant to the provisions in Section I.
- b. Cases involving ineffective assistance of counsel at a revocation hearing can occur months or years after an offender was revoked. In these cases, the agent should follow the provisions of Section 1.
- c. Cases involving sentence credit issues will be limited in scope and likely require limited release of records and usually not PHI. However, if attorney seeks full access, the agent should proceed by following the provisions of Section I: A,B,C, D and F and Section II.A.2.

- III. It is the intent of this policy and procedure to be limited to processing requests for access to information contained in the DCC supervision file and/or records maintained by the supervising agent. Agents shall reference Section I.A.1 for designated wording for releases. Other records that may be contained in other DOC files and maintained by another record custodian require presentation of the appropriate DOC 1163 and DOC 1163A to the designated record custodian.